

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-184967

DATE: October 24, 1975

MATTER OF: Total Maintenance Service, Inc.

60880

97796

DIGEST:

Allegation that awardee is nonresponsible because of prior defaults will not be considered by GAO, since practice of reviewing protests involving contracting officer's affirmative determination of responsibility has been discontinued absent showing of fraud or where solicitation contains definitive responsibility criteria which allegedly have not been applied.

Total Maintenance Service, Inc. (Total) protests the award of solicitation Nos. DAKF44-75-R-0015 and DAKF44-75-R-0018 for cleaning services at the U.S. Army Reserve Centers in York, Harrisburg, Chambersburg and Gettysburg, Pennsylvania to D & C Janitorial (D&C).

Total objects to the award, alleging that D & C defaulted on several prior contracts and that its price was 40 percent below Total's price. The basis for the protest, therefore, is that D & C is not capable of performing the contract and should be rejected as nonresponsible.

This Office has discontinued the practice of reviewing bid protests involving a contracting officer's affirmative determination of responsibility, unless either fraud is alleged on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974). Affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of the procurement officials who must bear any difficulties experienced by reason of a contractor's inability to perform. However, we continue to consider protests involving determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids.

Accordingly, we will not consider Total's protest on its merits.

Paul G. Dembling
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General Counsel